

EDWARD H. KUBO, JR. #2499
United States Attorney
District of Hawaii

LORETTA SHEEHAN #4160
Assistant U.S. Attorney
Room 6-100, PJKK Federal Building
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-2958
E-mail: loretta.sheehan@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 05-00191 JMS
)	
Plaintiff,)	MEMORANDUM IN OPPOSITION
)	TO MOTION TO COMPEL ELECTION
v.)	BETWEEN MULTIPLICITOUS
)	FIREARM AND AMMUNITION COUNTS;
JOSHUA KNEPPER,)	CERTIFICATE OF SERVICE
)	
Defendant.)	Date: April 10, 2006
)	Time: 11:00 a.m.
_____)	Judge: J. Michael Seabright

MEMORANDUM IN OPPOSITION TO MOTION TO COMPEL ELECTION
BETWEEN MULTIPLICITOUS FIREARM AND AMMUNITION COUNTS

The United States of America, through Assistant U.S. Attorney Loretta Sheehan, opposes the Motion to Compel Election Between Multiplicitous Firearm and Ammunition Counts filed by the Defendant, Joshua Knepper, on the ground that the law does not require election by the government prior to trial.

The government agrees that, at the time that it was recovered by law enforcement, the firearm which serves as the basis for Count 1 ammunition was loaded with the ammunition which

forms the basis for Count 2. The government further agrees that the simultaneous possession of a firearm and ammunition by a convicted felon constitutes one offense, rather than two. United States v. Keen, 104 F.3d 1111, 1118-20 (9th Cir. 1996).

The government argues, however, that when the defendant possessed both ammunition and a firearm, he violated the law in two ways. The government should be able to offer proof on both and should not have to elect on which offense to proceed prior to trial. The proper remedy is to allow for verdict on both counts, and to vacate one of the convictions and sentence the defendant on the remaining count only. United States v. Berry, 977 F.2d 915, 919 (5th Cir. 1992); United States v. Throneburg, 921 F.2d 654, 656-57 (6th Cir. 1990); accord United States v. Jose, 425 F.3d 1237, 1247-48 (9th Cir. 2005)(where defendants are charged with both greater and lesser included offenses, proper procedure is to allow conviction on both but to enter judgement on only the greater).

DATED: February 24, 2006, at Honolulu, Hawaii.

EDWARD H. KUBO, JR.
United States Attorney
District of Hawaii

By /S/ Loretta Sheehan
LORETTA SHEEHAN
Assistant U.S. Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

Served Electronically through CM/ECF:

Harlan Y. Kimura hyk@aloha.net February 24, 2006

DATED: February 24, 2006, at Honolulu, Hawaii.

_____/s/ Iris Tanaka